

Exhibit B

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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*IRA BROUS, on behalf of
themselves and all others
similarly situated,*

Plaintiffs,

v.

24 Civ. 1260 (ER)

ELIGO ENERGY, LLC, *et al*,

Defendants.

Teleconference

-----x

New York, N.Y.
April 16, 2025
2:30 p.m.

Before:

HON. EDGARDO RAMOS,

District Judge

APPEARANCES

WITTELS McINTURFF PALIKOVIC
Attorneys for Plaintiffs
BY: J. BURKETT McINTURFF

FINKELSTEIN, BLANKINSHIP, FREI-PEARSON & GARBER, LLP
Attorneys for Plaintiffs
BY: DANIEL J. MARTIN

WATSTEIN TEREPKA, LLP
Attorneys for Defendants
BY: DAVID MEADOWS
LEO P. O'TOOLE

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(Case called)

THE DEPUTY CLERK: Counsel, please state your name for the record starting with counsel for Brous.

MR. McINTURFF: Good afternoon, your Honor. This is Burkett McInturff from Wittels McInturff Palikovic on behalf of plaintiff and the proposed class. I also have with me here my colleague Dan Martin from Finkelstein Blankinship also on behalf of plaintiff and the proposed class.

THE DEPUTY CLERK: Counsel for defendant.

MR. MEADOWS: Good afternoon, your Honor. This is David Meadows on behalf of the defendants joined by my colleague Leo O'Toole.

THE COURT: Good afternoon to you all. This matter is on for a conference. I note for the record this is being conducted by telephone. Because there is a little bit of history with this case, I want to admonish the attorneys to be concise in their responses to my questions, and to be as efficient as we can as we go through this hearing. There are several matters concerning discovery that the parties are disputing. They are set forth in Mr. McInturff's letter of March 21. I will take them one at a time. First of all, the issue concerning I believe it was non-New York market conditions contracts. Mr. McInturff, I'll hear you.

MR. McINTURFF: Yes, your Honor. This is Burkett McInturff. Your Honor, the amended complaint in this case

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1 pleads a proposed class that encompasses customers from outside
2 of New York, and the claims at issue are both breach of
3 contract and consumer protection claims. And it's well-settled
4 that a plaintiff in our position is allowed to pursue discovery
5 in pursuit of their Rule 23 showing. And now that discovery is
6 underway and Eligo's begun producing documents and we've taken
7 a 30(b)(6) deposition, we've identified four additional
8 jurisdictions where we believe that customers in those
9 jurisdictions can be included in a propose class where the
10 named plaintiffs in this case can be the representatives.

11 And so understanding that we want to streamline the
12 issues, we made a proposal to Eligo that we could minimize any
13 additional discovery by just asking that they produce the same
14 customer level data that they've agreed to provide for New
15 York. So that's what the customers were charged and the basis
16 of those charges. That's an electronic production which
17 shouldn't be too burdensome. And then we ask that they also
18 produce the ESI that they withheld solely because it did not
19 touch on New York. If your Honor will recall when we had our
20 very first conference in this case on May 9, 2024, it was on
21 Eligo's premotion letter in advance of its first motion to
22 dismiss. And the Court at that juncture allowed discovery to
23 proceed, but only on behalf of New York customers because
24 Eligo's anticipated motion at that time sought to remove to
25 strike class allegations that extended beyond New York. And so

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1 the Court made a determination at that point prior to briefing
2 on that motion the discovery was going to be limited to the New
3 York customers. That determination was without prejudice.

4 We've since amended the complaint. We've engaged in
5 discovery, and that discovery has lead us to believe that we
6 can move forward with certification of a class that includes
7 customers not just from New York, but also from the four
8 additional jurisdictions mentioned in our letter, Washington,
9 D.C., Illinois, Massachusetts and Maryland. We don't think
10 that our request is particularly burdensome. In fact, Eligo's
11 counsel agreed in writing to produce this discovery. But what
12 they wanted in exchange, we didn't think was reasonable, and
13 it's not reasonable. And the proffered exchange was that Eligo
14 would produce the request of discovery if we stayed the actions
15 that we also have pending on behalf of our clients who are in
16 Pennsylvania and Ohio. But we couldn't agree to that because
17 our pending class actions in Pennsylvania and Ohio are
18 different cases.

19 In Pennsylvania it involves a different contract
20 terms. The customers that are subject to the Pennsylvania-type
21 contract are not going to be within this class, and
22 we're not going to move to certify a class that includes
23 customers that have the same type of Pennsylvania contract.
24 The Ohio contract is a little trickier, and the issue really
25 gets tied up in the two key issues that has actually brought us

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1 here to your Honor on this dispute, which is whether we can
2 bring claims on behalf of customers from other states and the
3 scope of the class we can certify.

4 So we're here in good faith -- and we've proposed a
5 good faith solution to allow plaintiff the discovery we need to
6 seek to certify the class we believe we can certify -- and to
7 do so at minimal burden to defendant -- while we still have
8 pending the issue defendant is disputing that we can bring the
9 claims on behalf of customers in other states. And they're
10 disputing that we can certify a class with the scope that we
11 believe that discovery will allow us to certify. So our
12 proposal here is there's minimal additional discovery. And
13 then once we've moved for certification, and once the Court has
14 weighed in on defendant's motion to strike and weighed in on
15 the certification decision, we can decide what we'll do with
16 the Ohio case.

17 The Pennsylvania case will always remain separate
18 because it's a different contract, but that's our proposal. We
19 think it's reasonable. We think it's consistent with Rule One.
20 We're not trying to make anybody do any additional work, but we
21 do need the discovery to certify the class. So that's our
22 proposal, and we would hope that the Court will find it
23 reasonable.

24 THE COURT: Mr. Meadows.

25 MR. MEADOWS: Thank you, your Honor. I'm afraid I

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1 differ with Mr. McInturff about the reasonableness of his
2 proposal and the burden that it would impose on Eligo. And if
3 I may, I want to give you a little bit of a background because
4 I think it's going to cut through all of the issues that we're
5 here to talk about today, and I'll be brief about it.

6 But Mr. McInturff is not quite correct in describing
7 that discovery is merely underway, or that we are in the
8 process of producing documents. In fact, discovery is almost
9 over. We are on the eve of depositions in this case, which
10 have to be concluded under the existing schedule order by the
11 end of May. And in fact, we have completed our document
12 production. Now that's very important because that has been a
13 very expensive and arduous process, which was the result of
14 extensive negotiations between us and Mr. McInturff and his
15 colleagues. That process included a very lengthy exchange of
16 search terms, which we repeatedly ran against our ESI database,
17 gave the other side hit reports. And I think there were nine
18 separate hit reports provided, or at least nine iterations of
19 the search terms, which resulted in a total review database of
20 214,000 documents, which we have now at great cost reviewed and
21 produced the relevant documents.

22 Now, it is only at the very end of that process that
23 plaintiff's counsel has said -- and I don't mean to be overly
24 casual about this -- but have said essentially, oh, by the way,
25 we would now like to open discovery to other states, other

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1 jurisdictions, other than New York, even though you, your
2 Honor, expressly limited discovery to the New York issues
3 almost a full year ago. And so we would submit that it's just
4 at this point in the case, it is far too late to revisit that
5 order now, and to drastically revise the scope of discovery
6 after we have produced all our documents and as we are getting
7 ready for depositions. So that's that a practical point, and
8 we think is reason enough to deny this request.

9 But substantively, the request also rest on a very
10 false premise. And if you read in plaintiff's letter, the gist
11 of their argument is that Eligo's contracts in New York are
12 essentially the same as those in the other jurisdictions where
13 it now wants to engage in discovery, which I believe is
14 Maryland, Washington, D.C., and there are two other states.
15 They even go so far as to call these contracts standard form
16 standardized contracts, and that's not true. As they admit
17 elsewhere in their letter, there are substantive differences
18 between these contracts from state to state. And just as one
19 high-level example, the New York contracts to which the named
20 plaintiffs are parties with us, identify four variable pricing
21 factors.

22 Where in some of the other states where Eligo does
23 business and where plaintiffs now want to seek discovery, there
24 are ten factors, or maybe even more than that in some cases.
25 And those factors differ from state to state and geography to

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1 geography because they consider things like weather patterns
2 and other things that naturally differ from region to region.
3 So the motion rests on a false premise. It seeks to undue an
4 order that you entered over a year ago and on which everyone
5 has relied, certainly Eligo has relied in fashioning the scope
6 of discovery in making its document production. And we submit
7 that it's simply inefficient, disproportionate and way too late
8 to revise that now.

9 THE COURT: That first request by Brous is denied.
10 The next issue concerns the so-called limited renewal of
11 plaintiff's motion for consumer protection discovery.
12 Mr. McInturff, I'll hear you.

13 MR. MCINTURFF: Yes, your Honor. So the complaint at
14 issue in this case includes consumer protection claims, and we
15 had requested in a prior letter, we teed up the issue that
16 defendant was refusing to provide customer complaints. And
17 your Honor raised that issue at the last conference. My
18 colleague Mr. Blankinship said on the record that we were
19 reserving our rights with respect to any outstanding issues.
20 He didn't appreciate, and we didn't appreciate, at the time
21 that the Court was thereafter going to terminate the pending
22 motions. We promptly reraised the issue with the defendant.
23 We even narrowed the request at this point to a narrower set.
24 All we're asking for is any complaint repository that were
25 maintained in the ordinary course, and that Eligo not withhold

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1 any complaints that crop up in the ESI that's subject to the
2 order.

3 If I could respond relatedly to defense counsel's
4 claims about where we are in discovery. They just finish
5 producing their first round of documents. We still have -- the
6 motion to dismiss is outstanding. There's still the motion to
7 substitute the named plaintiff. One of the named plaintiffs is
8 outstanding, so we don't agree that discovery is over in this
9 case. We consider the case to be sort of in the middle of the
10 case, and we don't think that producing complaint repositories
11 that are maintained in the ordinary course or withholding
12 complaints or producing complaints that have been withheld in
13 the ESI that's the subject of the current review. We think
14 that's very reasonable. As we said in our letter, consumer
15 complaints and consumer protection matters are a routine part
16 of discovery.

17 I know in your Honor's *New York V. Penn Higher*
18 *Education* case, your Honor held that complaints were relevant
19 to the New York Attorney General's claim that a student loan
20 servicer committed deceptive practices. That same case
21 involved claims under New York's GBL 349 just like this case.
22 So the rationale that this Court adopted in the *New York v.*
23 *Penn Higher Education* case applies. Customer complaints are a
24 standard part of any consumer protection case, and we didn't
25 wait too long to raise this issue. This case is conflicts

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1 litigation. Eligo has waited longer on other discovery issues
2 in this case, and we raised this issue with Eligo a month after
3 your Honor raised it at the February 7 conference. Thereafter
4 we had a meet and confer, and we filed our papers promptly.

5 In the interim period, we had to respond to a motion
6 that Eligo filed on March 12th, but we haven't been delaying,
7 and our request here is reasonable and proportionate, because
8 we do have consumer protection claim that Eligo has not moved
9 to dismiss. Those are live claims, and the complaint related
10 discovery goes to those claims.

11 THE COURT: Mr. Meadows.

12 MR. MEADOWS: Thank you, your Honor. I think this is
13 a very similar issue to the first, because here the plaintiffs
14 are again asking you to not only undue an order that you
15 entered about six weeks ago I believe, but also would have the
16 net effect -- if you granted it -- would have the effect of
17 again undoing our very carefully negotiated agreements on ESI
18 and discovery. And in particular, the consumer protection
19 documents that plaintiff are asking you to grant them access to
20 today were the subject of a prior discovery letter motion that
21 they filed, in particular document 69 on the docket.

22 Now the last time we were before you on a discovery
23 letter motion -- and as you know the letter motion practice has
24 been extensive in this case, you ask the parties point blank,
25 look, there's a number of letter motions on the docket that

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1 haven't ruled on. I want to know which of these are still
2 alive, which need my attention. And Mr. McInturff's colleague
3 Mr. Blankinship at that hearing told you, and I quote from the
4 hearing transcript, "I don't think there are any outstanding
5 issues. I think we've worked through those amongst ourselves
6 or moved passed them." Now based on that representation and
7 not long after that February 7 hearing, you entered an order, I
8 believe it's docket 164, terminating I believe it was eight or
9 nine separate letter motions, including the letter motion that
10 related to these consumer protection materials that we're here
11 again talking about today.

12 Now if plaintiff's counsel either misspoke or told you
13 that they had moved pass an issue that they actually hadn't
14 moved pass, I think it was incumbent on them to say something
15 about that a lot sooner than they have. Because, again, that
16 representation was made at a hearing on February 7th. Here we
17 are today in mid-April where they're asking you to go back and
18 undo an order in which terminated that motion. Again, it's
19 just way too late to do that. And it's especially way too late
20 because we not only finalized the search term negotiation, but
21 completed our production. And they're now asking us to go
22 back, not only undo the order, but go back and reopen our
23 document production, reopen our review, to give them documents
24 that were requested in a motion that has been denied six or
25 seven weeks ago. It's unreasonable on its face, and for those

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1 reasons we would ask you to deny this.

2 THE COURT: Plaintiff I'll give you 60 seconds,
3 Mr. McInturff.

4 MR. McINTURFF: Yes, your Honor. Mr. Meadows left out
5 the quote from the transcript where my colleague
6 Mr. Blankinship said, "To be candid, your Honor, I didn't
7 anticipate that we were going to go back to discuss some of
8 those prior issues, but reserving my right to do so. I don't
9 think there are any outstanding issues I recall." Again, your
10 Honor, this is basic consumer protection discovery that
11 shouldn't be withheld. It's not burdensome, and we negotiated
12 the discovery. We negotiated with the understanding that there
13 were many issues still outstanding before the Court.

14 THE COURT: The request is denied. The next issue
15 concerns should the Court direct Eligo to provide a hit report
16 for its Slack collection. Mr. McInturff.

17 MR. McINTURFF: Yes, your Honor. Our request here is
18 very straightforward. We just want a hit report. We haven't
19 asked for anything. Eligo hasn't refused any request that
20 we've made. We just want the hit report. The background here
21 is, we had requested that Eligo collect Slack. They collected
22 the Slack messages. As your Honor might recall, Slack is a
23 collaboration platform that is different than email. They
24 collected the Slack messages, but they didn't tell us they had
25 done so. The Court had ordered that we pay for the Slack

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1 collection, so we had no expectation they were going to collect
2 it before we paid them. When we reached out to them and asked
3 if they had made the collection with the expectation of paying,
4 then they told us that they had already made the collection and
5 they didn't tell us about it. Slack is a different animal than
6 email.

7
8 We're not necessarily saying that anything has to be
9 done at this point, but we were waiting for them to tell us
10 when they collected Slack so that we could search it in the
11 appropriate way. Because the way people talk, communicate on
12 Slack is different than they do in email. I'll just add that
13 since we filed our letter, there's been guidance from the
14 Sedona conference that has come out that has reinforce that
15 Slack may require different search terms because -- and I'm
16 quoting -- "users often communicate much more informally on
17 collaboration platforms than they do in emails; for example,
18 therefore, the same search terms may not yield the intended
19 result."

20 So what we're trying to do here now that we found out
21 recently on March 6 that Eligo in fact had folded in the Slack
22 communications into the ESI search, we just want a hit report
23 to make sure that the search terms that were negotiated and
24 agreed on are working properly on Slack. We haven't requested
25 that they produce anything else. It's just the information

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1 that we would have expected would have been provided once they
2 uploaded the Slack ESI to their system and began searching it.
3 But for reasons we don't understand, Eligo decided not to
4 notify us that they had done that, but we're asking for a hit
5 report.

6 THE COURT: Can I ask you, putting aside the Sedona
7 recent recommendation as such it is, nothing that you just
8 mentioned about Slack arose the nature of it, the way people
9 communicate, none of that arose over the last several weeks,
10 did it, those observations?

11 MR. McINTURFF: No, your Honor. We didn't know that
12 it had been collected until the last several weeks. That's the
13 issue.

14 THE COURT: When you were putting together your
15 proposed hit terms, you knew what Slack was and how it
16 operated?

17 MR. McINTURFF: Correct, but we thought we were
18 searching email. We thought we were searching email.

19 THE COURT: Mr. Meadows.

20 MR. MEADOWS: Thank you, your Honor. I think as you
21 might already be suspecting, this request again would reopen
22 our search term agreement and negotiation and expand it pretty
23 considerably. Now, the supposed basis for that, that
24 Mr. McInturff offered you, is that they didn't know or that we
25 didn't disclose that the Slack collection was included in

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1 database against which we were running the search terms as we
2 negotiated them.

3 And I simply don't understand that because as you may
4 recall this issue regarding Slack first came before you late
5 last year. We had a November 7 conference, at which you
6 ordered us to collect and produce documents from the Slack
7 messaging system. And of course we obeyed your order. We went
8 out and we collected the documents, and we put them in our
9 review database. Now, as we went through the search term
10 negotiation process -- again as I mention earlier, we
11 extensively negotiated and communicated with plaintiffs'
12 counsel. We shared the hit reports with them multiple times.
13 They asked us questions about the results. There was an
14 extensive back and forth.

15 Now, at no point did they ask us for a hit report from
16 Slack. At no point did they ask us any specific question about
17 Slack. And if they had, we would have answered them. And I
18 submit to you that it was obvious that we were including Slack
19 in the documents we were searching both because the numbers
20 were enormous. The parties had to work very hard to get to a
21 search term list that even got our review universe to 214,000
22 documents so we were obviously dealing with a huge amount of
23 data, and all they had to do was ask. To ask now only after we
24 had reached an agreement -- and by the way, our agreement on
25 search terms is in writing. It is memorialized in email.

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1 To ask now to reopen this, I think once again it's far
2 too late. It's fundamentally unfair to my client, and it's
3 very much for the purpose of revising the search term agreement
4 that plaintiff's counsel reached with us back in January of
5 this year. As Mr. McInturff even said during his initial
6 presentation, in his view I think Slack -- and I wrote it down,
7 may require different search terms. It's way too late for
8 that. And last point, very important to understand. From the
9 defendant's perspective in the search term negotiation, we were
10 obviously very concerned with the overall burden and cost of
11 the review. And so our chief negotiating goal, which we made
12 very clear to plaintiffs counsel was, we needed to get to an
13 overall number of documents in our review database that we
14 considered to be reasonable and proportional, and that number
15 was going to be in the low 200,000.

16 Plaintiff counsel agreed to that. They now want to
17 expand it over that number. By how much, remains to be seen.
18 But this whole Slack hit report is for the purpose of revising
19 the search term agreement and making us search more ESI than we
20 ever agreed to search and more ESI than the plaintiffs agreed
21 that we should have to search.

22 THE COURT: Mr. McInturff, 60 seconds.

23 MR. MCINTURFF: Yes, your Honor. Discovery is an
24 iterative process. Discovery is not one and done. And the
25 case law is very clear that search terms require testing and

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1 careful planning. The idea that defendant uploaded a bunch of
2 documents from a different type of communication systems that
3 requires a different type of search term, the idea that we're
4 somehow bound is not appropriate. More importantly, we're not
5 necessarily asking for any changes. We want the information to
6 see if our search terms work on this other communication
7 platform. The case in the Southern District is clear that ESI
8 should be a transparent process that involves corroboration.
9 It's not gotcha. It's not surprise. This was a big surprise
10 to us. Again, we haven't asked for any remedial measures yet.
11 We just want information. It would take them less time than
12 this call to produce a hit report.

13 THE COURT: Mr. McInturff, I'm really trying to figure
14 out what difference it makes, because I remember the discussion
15 concerning Slack. I remember that Eligo did not want to
16 produce ESI from Slack. They wanted to just limit it to, email
17 as I recall. And I said you can't sort of arbitrarily limit an
18 entire, or carve out an entire mode of communication. If I
19 recall they weren't very happy with my decision in that regard,
20 although they weren't in front of me, it was fairly obvious. I
21 don't know what difference it would have made in terms of the
22 search terms that are used. They're English. And although
23 people may use abbreviations or less than full sentences, but
24 they still use words. Those words would be the same over the
25 various modes of communication.

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1 And as Mr. Meadows indicated, the parties apparently
2 agreed to a universe of a particular number of hits. You've
3 reached that number. I don't know what difference it makes.

4 MR. McINTURFF: Your Honor, that's why we're asking
5 for a hit report. We can see from the hit report. If I can
6 read a little bit more of this briefing from Sedona that came
7 out in April. It says, "It is necessary to understand what
8 abbreviations, acronyms, shorthand, and slang are likely to be
9 used by the communications in the specific matter." We can't
10 be sure what the effect of using email only search terms on a
11 different platform is until we can see the effect of those
12 email only search terms are on that platform. We're just
13 trying to get the information to see what the effect was.

14 If we believe something is necessary to be done, we'll
15 raise it with defendants. And if we can't agree, we'll raise
16 it with your Honor. We're not even at the point of being able
17 to say that the email search term worked or didn't work because
18 we can't see the results from the hit report.

19 THE COURT: Okay. That application is denied. I do
20 note that there is a letter that was submitted by plaintiffs on
21 April 14 concerning another apparently related two issues of
22 discovery. Mr. Meadows, I don't know whether you've had an
23 opportunity to review or are prepared to address the issues in
24 that April 14 letter?

25 MR. McINTURFF: Your Honor, if I could interrupt. I

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1 apologize. There's still an issue left in the letter we're
2 talking about from the 21st of March.

3 THE COURT: The video files?

4 MR. McINTURFF: Yes, sir.

5 THE COURT: Mr. McInturff, why don't you tell me what
6 that is about.

7 MR. McINTURFF: So the issue here is standard ESI
8 discovery practice. Video files and audio files can't be
9 identified using search terms. You can't plug a search term
10 into a system and pull up responsive or relevant video or audio
11 files. So the parties initially in our original ESI proposal
12 agreed that audio and video files would be searched for
13 independently by counsel. We were unable to agree on an ESI
14 protocol, and one wasn't entered. And we found out recently
15 that what defendants did was is they, the only audio and video
16 file that they have reviewed are audio and video files that
17 were either attached to emails that hit on search terms; or
18 where a search term hit on the file name.

19 Thus far they've produced, other than named plaintiff
20 call recordings, they've produced two substantive audio video
21 files. One is sort of a recording training session, and one is
22 a video training session. It's very helpful discovery saying a
23 picture is worth a thousand words. These are very likely to be
24 trial exhibits. These audio videos are used in the ordinary
25 course, and Eligo's search for them is not reasonable. It's

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1 not consistent with standard practice, and it doesn't represent
2 a reasonable search under Rule 26 (G). What we've asked them
3 is, their 30(b)(6) testified that Eligo has accessible video
4 recording that are kept in a location that are for training.
5 So we ask counsel to identify those and produce any video
6 recordings that are responsive. Again, they've already
7 produced one training document. It's very informative.

8 And then we also ask that defense counsel interview
9 the key Eligo personnel and ask that they identify any other
10 video or audio files that are potentially responsive to our
11 discovery request. That's ordinary discovery practices. And
12 the idea that only search terms could be used to identify audio
13 and video files, frankly it's just an inadequate search. We're
14 asking that your Honor direct Eligo to perform a reasonable
15 search.

16 THE COURT: Can I ask, so the video files and audio
17 files that you are asking for or that you are referring to are
18 all internal Eligo training material; is that it? Is that
19 accurate?

20 MR. McINTURFF: The 30(b)(6) witness testified that
21 there is a repository video recording that are "in the training
22 context." There may be other video recordings we don't know
23 about. But what we're asking is, is that counsel perform a
24 reasonable search. I could see that there may be video
25 recordings about specific rate setting decisions that aren't

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1 necessarily training, per se, but certainly the training
2 documents would be the low hanging fruit.

3 THE COURT: And how many of these have you received,
4 just one I think you said in your letter?

5 MR. McINTURFF: We've received one. After our letter,
6 Eligo made a subsequent production and we received one
7 additional.

8 THE COURT: So you have two videos?

9 MR. McINTURFF: We have one video that discusses
10 Eligo's training and hedging strategies. And then we have one
11 recording that we're still trying to get to the bottom of. We
12 know what it's discussing, but it's not clear if it's Eligo
13 because it's discussing gas sales in New York. And counsel has
14 repeatedly represented that Eligo didn't sell gas in New York.

15 THE COURT: Is that a video or audio recording?

16 MR. McINTURFF: That's an audio file.

17 THE COURT: Okay. Mr. Meadow?

18 MR. MEADOWS: Thank you, your Honor. It's simply not
19 true that we haven't done an adequate search. Our search for
20 responsive documents has encompassed multiple databases and
21 hundreds of thousands of documents. In many, many cases search
22 terms are sufficient to identify responsive audio and video
23 files because they might be attached to emails. They might be
24 attached to other documents that hit on the search terms that
25 indicate that those attachments are potentially relevant.

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1 When we have encountered those in our review, we have
2 actually listened to the audio files or watch the video files
3 as the case may be to determine if they're responsive. And one
4 of the reasons why the plaintiffs have seen very relatively few
5 audio and video files is that we have found the responsiveness
6 rate is exceptionally low. It's just not the case that these
7 files relate to the issues that are alive in this case which
8 are essentially variable rate class setting. Eligo does many
9 things other than that. There are many aspects of its
10 business. And these videos by and large just don't relate to
11 that. So it's not even clear to me what more exactly we would
12 be ordered to do if you were to grant this request. But
13 certainly we have not excluded any audio or video files from
14 our review. We have reviews hundreds and thousands of
15 documents. And when we've come across these files, we've
16 listened to them and watched them and we have produced what's
17 responsive to the discovery requests.

18 THE COURT: Let me ask you this: Does Eligo have,
19 lack of a better word, a library of videos or training
20 materials that it stores somewhere if you know?

21 MR. MEADOWS: I'm not aware of a library of videos,
22 certainly not a library of videos that would exist utterly
23 apart from the other documents that we have collected, which
24 are not just email or Slack, but all sorts of different
25 databases, including the databases that Eligo actually uses to

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1 set rates. So of course as part of a document collection of
2 this size, I can't, your Honor, in good faith represent that
3 there isn't some video out there or some audio file that we
4 haven't collected, but that's always the case. And I'm not
5 aware of any repository that we have not searched or made a
6 reasonable effort to search.

7 THE COURT: Mr. McInturff.

8 MR. MCINTURFF: Yes, your Honor. Eligo's 30(b)(6)
9 witness testified that they had accessible video recordings
10 that are kept in the ordinary course. And he specifically
11 testified that they're "in the training context." So what I
12 haven't heard defense counsel say is that they run that down or
13 that they have interviewed custodians about potentially
14 responsive audio or video files.

15 THE COURT: Make a determination whether or not they
16 are consistent with the 30(b)(6) witness's deposition any
17 additional training video, etc., that may not exist in the
18 context of the searches that you've already conducted. And
19 again, I don't know exactly what it was that this witness said,
20 and I don't know whether that witness was involved in the
21 document production. Although I assume he or she was, but to
22 the extent that there is any other training areas or training
23 function within Eligo that may have some of these videos, you
24 should run that down and report back to Mr. McInturff.

25 MR. MEADOWS: Understood, your Honor. And with one

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1 clarification if I may. I think we all understand that
2 training is a very broad concept, and there may be training
3 videos or audio files that have nothing to do with rate setting
4 or anything else that's at issue here. With that
5 understanding, we're certainly happy to go back and be double
6 sure that anything that's potentially relevant, we will talk to
7 our people and make sure we've covered.

8 THE COURT: Absolutely. I'm not suggesting that you
9 turn over irrelevant materials.

10 MR. MEADOWS: Understood. Always helps to be extra
11 clear. Thank you for indulging me on that.

12 THE COURT: Okay. We were talking about, I raise the
13 issue of the April 14th letter. Mr. Meadows, I don't know if
14 you had an opportunity to review or digest that request. So
15 you tell me?

16 MR. MEADOWS: Thank you. I have not yet, your Honor.
17 In fact, everything else going on in the case, I plan to ask
18 you today for an extension on our time to respond to that
19 letter. I believe currently, it may be Friday of this week, it
20 would be a great help to us to have until Wednesday of next
21 week to respond to that.

22 THE COURT: That application is granted. With that,
23 unless there's anything else that we should discuss today,
24 Mr. McInturff.

25 MR. McINTURFF: No, your Honor.

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1 THE COURT: Mr. Meadows?

2 MR. MEADOWS: No, thank you, your Honor.

3 THE COURT: In that event, we're adjourned. Stay

4 well.

5 (Adjourned)

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